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<b>S.G., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-1274</b>
	)	<b>Issued: April 6, 2022</b>
<b>DEPARTMENT OF THE NAVY, NAVAL SEA</b>	)	
<b>SYSTEMS COMMAND, MARE ISLAND</b>	)	
<b>SHIPYARD, Vallejo, CA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 25, 1985 appellant filed a claim for traumatic injury (Form CA-1) alleging that on April 11, 1983, she sustained left shoulder and lower back pain after reaching for a valve in a confined area while in the performance of duty. OWCP accepted her claim for cervicobrachial muscle strain, low back strain, spinal subluxations, and bilateral carpal tunnel syndrome. The record provides documentation that appellant received wage-loss compensation on the periodic rolls, based upon her loss of wage-earning capacity, since at least June 16, 2002.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

compensation and Social Security Administration (SSA) age-related retirement benefits from October 1, 2011 through March 2, 2019.

In a notification of personnel action, Standard Form (SF) 50-B dated November 30, 1990, appellant's service computation date was listed as July 27, 1979 and her retirement plan was listed as the Civil Service Retirement System (CSRS) Offset retirement plan.

By decision dated December 30, 2019, OWCP vacated the April 29, 2019 overpayment determination, finding that as the November 30, 1990 SF 50-B indicated that she was covered by CSRS, not the Federal Employees Retirement System (FERS).

On November 25, 2019 OWCP received a November 19, 2019 dual benefits calculation form from SSA containing appellant's SSA rates with and without FERS for effective dates from October 2011 to December 2018.

An OWCP memorandum to file dated December 30, 2019 noted that OWCP had received a response from SSA on November 25, 2019 relative to her dual benefits, but that as an SF 50-B dated November 30, 1990 demonstrated she was not covered under FERS, no further action was required.

On December 3, 2020 OWCP received a dual benefits calculation of even date from SSA, containing appellant's SSA rates with and without FERS for effective dates from October 2011 through December 2020.

An OWCP memorandum to file dated December 31, 2020 explained that SSA reported that there were benefits to be offset under CSRS Offset. The memorandum concluded that the benefits to be offset were not FERS.

In a form dated February 1, 2021, SSA advised OWCP that appellant had concurrently received FECA benefits and retirement benefits through FERS beginning October 2011. The form purported to show appellant's SSA age-related retirement benefit rates with and without a FERS offset from October 2011 through December 2020.

On February 1, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from December 1, 2011 through January 30, 2021 totaling \$25,568.60.

On May 5, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$25,568.60 had been created because appellant received SSA age-related retirement benefits based upon her federal service, without appropriate offset, at the same time she received FECA wage-loss compensation for the period October 1, 2011 through January 30, 2021. It explained that the overpayment occurred because her compensation was not reduced by an appropriate offset. OWCP found appellant without fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). It afforded appellant 30 days to respond.

In a letter dated May 20, 2021, received by OWCP on June 1, 2021, appellant contested the creation of the overpayment. She submitted a partly completed Form OWCP-20 of even date. Appellant noted that the retirement system she was under was CSRS. She also provided a work

history summary in which she noted her federal employment commencing in 1971 through December 1986 at which time she was employed by the United States Air Force (USAF). She noted that when FERS became effective on January 1, 1987 she was still employed by the USAF. In another letter of even date, received on June 8, 2021, appellant requested a prerecoupment hearing.

By decision dated July 1, 2021, OWCP denied appellant's request for a prerecoupment hearing, finding that it was not requested within 30 days.

By a second decision dated July 2, 2021, OWCP finalized its preliminary overpayment determination of May 5, 2021, finding that appellant received an overpayment of compensation in the amount of \$25,568.60 for the period October 1, 2011 through January 30, 2021 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for that period without appropriate offset. It found that, while she was without fault in the creation of the overpayment, the evidence received was insufficient to support waiver of recovery of the overpayment. OWCP required repayment of the overpayment by deducting \$486.64 every 28 days from appellant's continuing compensation payments.

The Board, having duly considered this matter, finds that OWCP failed to properly develop the underlying issue of what portion of appellant's SSA age-related retirement benefits were attributable to federal employment.<sup>3</sup>

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by an appropriate offset. Since the SSA will not report an offset amount until after SSA benefits are received, an overpayment will almost always occur and will need to be calculated for each period in which the offset amount was not withheld from compensation.<sup>4</sup> The offset provision of 5 U.S.C. § 8116(d)(2) and applicable regulations apply to SSA age-related retirement benefits that are attributable to federal service.<sup>5</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>6</sup> In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of SSA age-related retirement benefits, the Board has observed that OWCP uses a FERS Offset Calculation Worksheet.<sup>7</sup> This calculation worksheet is sent to SSA and the completed form is returned to OWCP setting forth purported SSA calculations as to the effective date and rate of

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<sup>3</sup> See *Order Reversing Case, C.T., (J.T.)*, Docket No. 21-0153 (issued July 21, 2021); *Order Reversing Case, W.G.*, Docket No. 20-1389 (issued June 30, 2021); *Order Reversing Case, R.L.*, Docket No. 20-1333 (issued May 13, 2021); *J.L.*, Docket No. 19-1806 (issued July 29, 2020); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(h), (September 2018).

<sup>5</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>6</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>7</sup> *Id.*

SSA benefits without FERS and the effective date and rate of SSA benefits with FERS.<sup>8</sup> Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.<sup>9</sup>

The Board has observed, however, that not all federal employees are enrolled in FERS.<sup>10</sup> Some FECA claimants are enrolled in another retirement program, such as the CSRS. Other federal employees are not entitled to be enrolled in a federal retirement program. Therefore, OWCP's procedures with regard to requesting offset information are not applicable to all recipients of FECA compensation and SSA age-related retirement benefits. As such, the information solicited on the FERS Offset Calculation Worksheet that OWCP sends to SSA is not applicable to non-FERS claimants and does not establish either the fact or amount of an overpayment.

Here, the evidence of record does not establish that appellant was covered under FERS. Rather the evidence establishes that she was covered under CSRS or CSRS Offset during her federal service. As such, the Board finds that the July 2, 2021 decision must be reversed.<sup>11</sup>

**IT IS HEREBY ORDERED THAT** the July 2, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 6, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> *Id.*

<sup>9</sup> *J.L., supra* note 3.

<sup>10</sup> *See Order Reversing Case, W.G., supra* note 3.

<sup>11</sup> *See Order Reversing Case, R.L., supra* note 3.